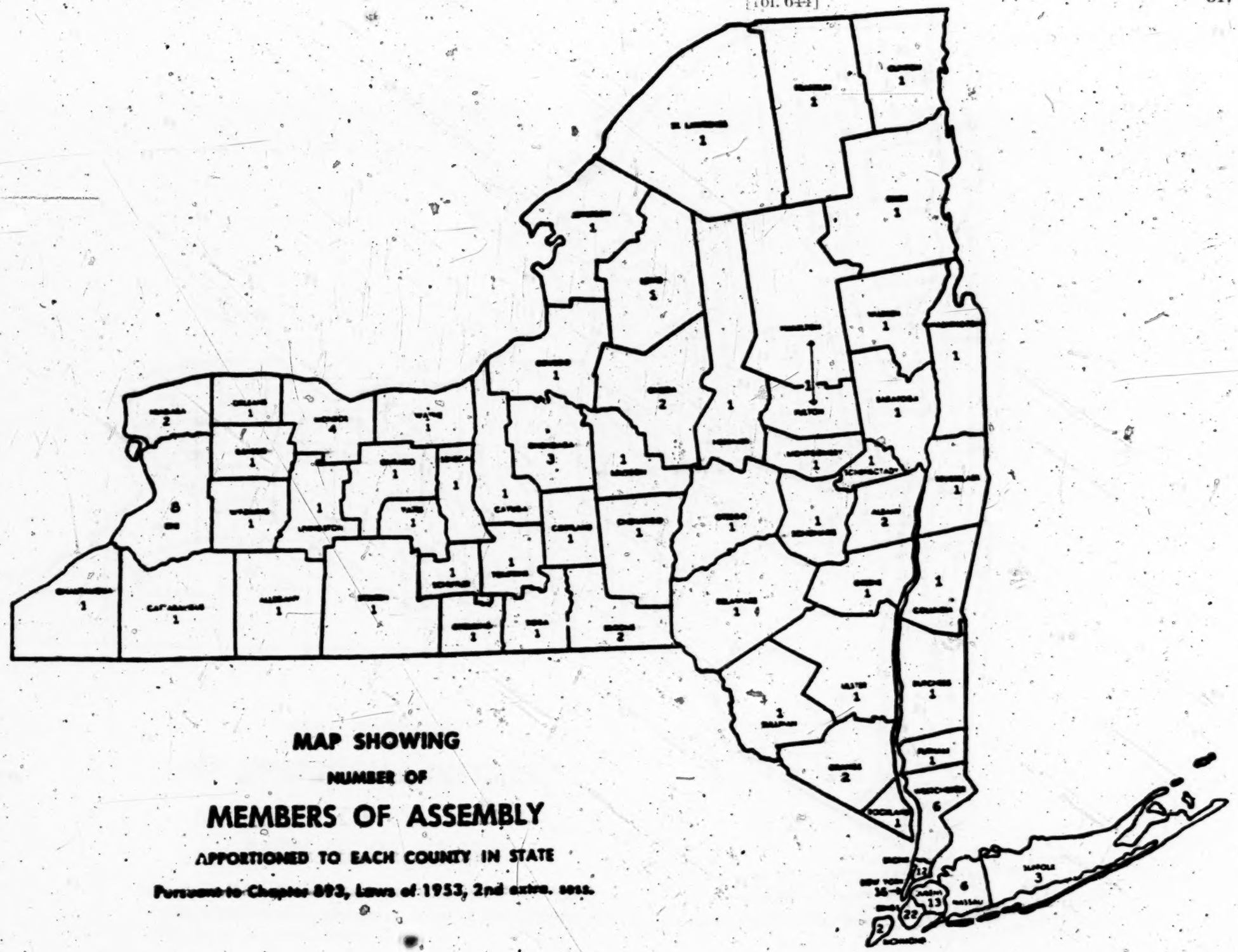


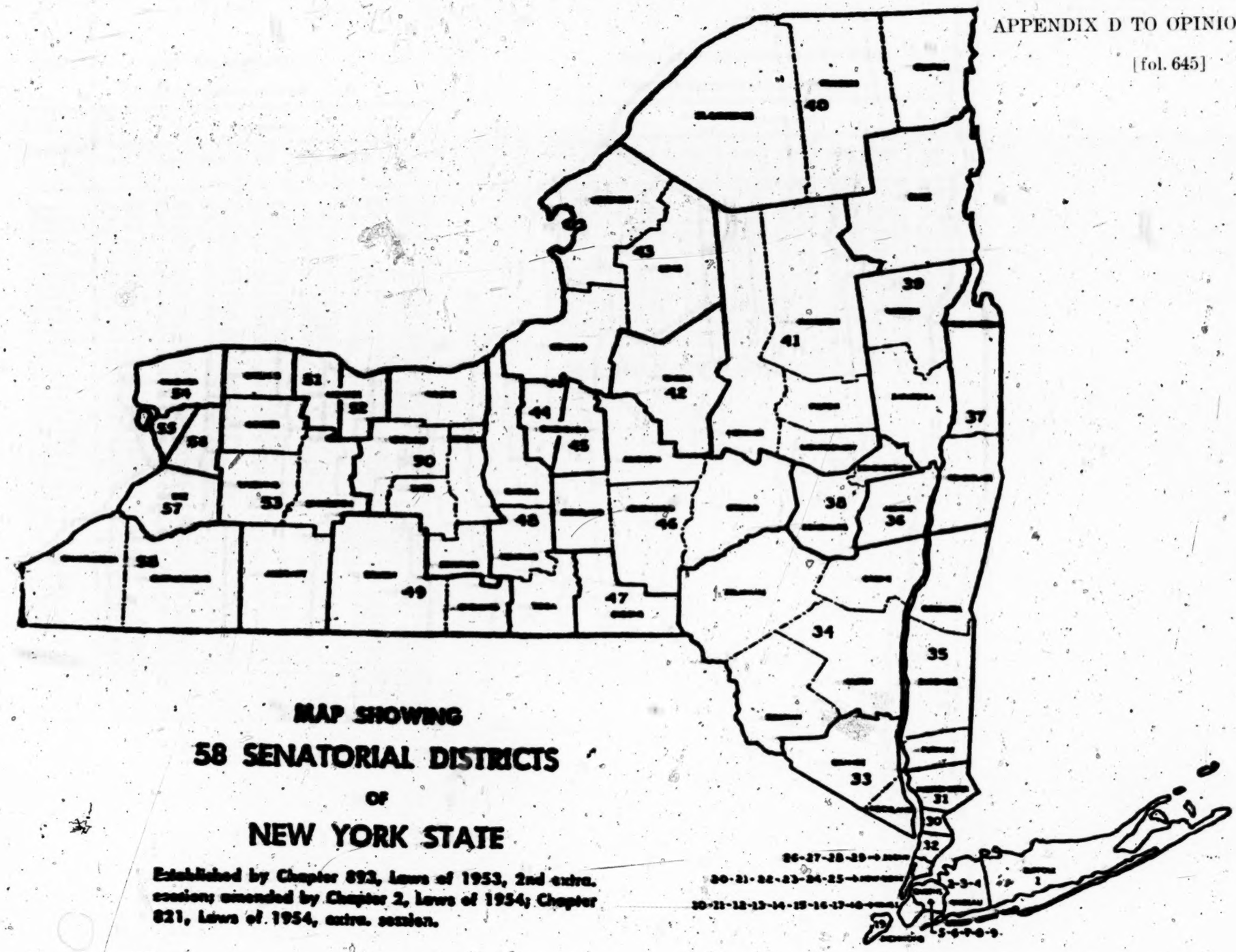
MAP SHOWING

NUMBER OF

MEMBERS OF ASSEMBLY

APPORTIONED TO EACH COUNTY IN STATE

Pursuant to Chapter 893, Laws of 1953, 2nd extra. sess.



MAP SHOWING

58 SENATORIAL DISTRICTS

OF

NEW YORK STATE

Established by Chapter 892, Laws of 1953, 2nd extra. session; amended by Chapter 2, Laws of 1954; Chapter 821, Laws of 1954, extra. session.

COUNTY RECAPITULATION

COUNTIES	Population						
	1810	1820	1830	1840	1850	1860	1900 final
Albany	100,220	100,910	707,120	211,960	221,315	229,380	272,926
Allegany	40,216	36,847	36,815	39,023	39,081	43,784	46,978
Bronx	615,000	722,666	872,168	1,265,258	1,204,711	1,451,277	1,424,815
Broome	66,641	113,010	135,000	147,022	165,749	184,666	212,661
Cattaraugus	72,736	71,228	73,778	72,208	72,652	77,901	80,187
Cayuga	66,731	66,221	66,344	64,781	65,800	70,136	75,942
Chautauqua	116,818	115,348	122,100	130,457	123,880	133,190	145,377
Chemung	20,017	25,672	72,292	74,080	72,718	86,827	98,706
Chenango	36,648	34,989	36,616	34,648	36,484	39,128	43,243
Clinton	47,361	43,888	46,143	46,685	54,000	63,622	72,732
Columbia	44,111	38,230	42,720	41,617	41,464	43,152	47,322
Cortland	30,674	29,655	31,031	31,709	33,063	37,158	41,113
Delaware	45,986	42,774	45,482	41,163	40,999	44,429	48,549
Dutchess	91,044	91,745	99,675	106,462	120,542	136,781	176,666
Erie	671,997	684,666	693,616	702,606	709,577	899,238	1,064,688
Essex	32,468	31,871	32,042	33,989	34,178	35,046	36,389
Franklin	46,183	43,541	45,915	45,994	44,206	44,880	44,742
Fulton	45,625	44,927	46,675	46,560	48,897	51,021	51,394
Genesee	40,767	37,976	43,420	44,468	44,481	47,164	53,994
Greene	30,664	28,796	28,207	25,824	27,926	28,745	32,372
Hamilton	4,481	3,870	4,242	3,929	4,188	4,105	4,267
Herkimer	44,109	44,962	48,708	54,806	59,527	61,467	66,370
Jefferson	51,696	52,280	55,776	63,574	64,003	65,527	67,226
Kings	1,799,513	2,016,586	2,202,994	2,600,401	2,698,285	2,738,175	2,837,299
Lewis	25,647	23,704	24,717	23,447	22,515	22,521	23,249
Livingston	38,437	36,330	39,284	37,340	38,510	40,257	44,063
Madison	41,742	39,535	40,307	39,790	38,598	40,214	44,635
Monroe	319,310	362,624	382,174	423,881	438,220	487,632	538,267
Montgomery	61,680	57,928	61,235	60,076	59,162	58,594	57,249
Nassau	116,828	126,129	207,640	203,053	406,748	672,765	1,300,171
New York	2,127,747	2,294,303	1,945,029	1,967,312	1,918,824	1,960,101	1,698,281
Niagara	100,550	110,708	133,437	149,329	160,110	199,992	242,269
Oneida	167,331	182,833	196,466	198,763	203,636	222,545	264,401
Onondaga	213,992	241,445	267,000	291,606	295,109	341,719	423,028
Ontario	84,625	82,633	85,240	84,278	85,267	80,172	66,079
Orange	115,118	119,344	125,629	130,353	140,113	152,285	183,734
Orleans	23,919	23,679	30,882	32,735	27,709	29,322	34,159
Oswego	73,999	71,048	71,404	69,645	71,275	77,181	86,118
Otsego	46,534	46,269	47,494	46,719	46,062	50,763	51,942
Putnam	12,767	10,997	12,800	13,744	16,556	20,307	21,722
Queens	396,737	469,042	713,891	1,079,129	1,297,634	1,550,849	1,990,579
Rensselaer	121,338	112,729	118,420	119,781	121,834	132,697	142,585
Richmond	96,634	116,271	158,224	154,346	174,441	191,555	221,991
Rockland	46,997	46,548	48,479	50,999	74,261	89,276	136,803
St. Lawrence	99,338	88,121	91,696	98,969	91,696	96,867	111,239
Saratoga	62,982	63,029	63,696	63,214	63,696	74,999	89,096
Schenectady	26,696	29,263	116,708	120,021	122,404	142,027	133,896

COUNTY RECAPITULATION — (Concluded)

COUNTIES	Population						
	1915	1920	1925	1930	1940	1950	1960 final
Schoharie	23,688	22,363	21,345	19,987	20,812	22,708	22,618
Schuyler	13,954	13,098	12,436	12,909	12,979	14,192	15,044
Seneca	25,249	24,725	25,342	24,953	25,725	29,253	31,954
Steuben	83,830	80,627	82,173	82,671	84,927	91,439	97,691
Suffolk	104,342	110,246	143,208	161,065	197,338	276,129	666,784
Sullivan	38,199	33,163	40,192	35,272	37,901	40,721	46,272
Tioga	25,849	24,212	26,111	25,490	27,072	30,166	37,902
Tompkins	36,535	35,286	39,350	41,490	42,340	50,122	66,164
Ulster	88,367	74,979	83,052	80,155	87,017	92,621	118,906
Warren	32,977	31,673	34,070	34,174	36,033	39,206	44,002
Washington	46,055	44,288	46,681	46,482	46,726	47,144	48,478
Wayne	53,476	48,527	51,785	49,906	52,747	57,323	67,989
Westchester	321,713	344,436	425,798	520,947	573,558	625,816	808,891
Wyoming	33,028	30,314	30,827	28,784	31,394	32,822	34,783
Yates	18,841	16,641	17,068	16,848	16,381	17,615	18,614
Totals	9,887,744	10,385,227	11,102,131	12,588,066	13,479,142	14,830,192	16,782,304

[fol. 647]

IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

61 Civ. 1559

W.M.C.A., INC., R. PETER STRAUS, JOSEPH DE MAIO, EDWARD LIND, S. THOMAS DELANEY, EDWARD C. BROWN, JAMES J. MCCAFFERTY, Plaintiffs,

—v.—

CAROLINE K. SIMON, Secretary of State of the State of New York, LOUIS J. LEFKOWITZ, Attorney General of the State of New York, PAUL R. SCREVANE, President of the City Council of the City of New York, EUGENE H. NICKERSON, Chairman, Board of Supervisors, Nassau County, LEONARD BERMAN, Chairman, Board of Supervisors, Westchester County, WILLIAM J. LEONARD, Chairman, Board of Supervisors, Suffolk County, DENIS J. MAHON, JAMES POWER, JOHN R. CREWS, THOMAS MALLEE, Commissioners, Board of Elections, New York City, Defendants.

Before: WATERMAN, Circuit Judge, RYAN and LEVET, District Judges.

RYAN, D.J.:

This suit seeks to invoke the "equal protection" clause of the Fourteenth Amendment to the United States Constitution.

Plaintiffs allege that Article III (Sections 2-5) of the New York Constitution, which designates the method of geographic apportionment of Senators and Assemblymen to be elected to the State Legislature, is unconstitutional because it discriminates against the urban residents of the [fol. 648] state and, therefore, conflicts with the "equal protection" clause.

We do not find that "invidious discrimination" exists or that it is impossible to change the State Constitution by a non-judicial means.

In the Supreme Court's remand of this case, the *per curiam* opinion stated:

> " . . . we held in *Baker* v. *Carr*, 369 U.S. 186, that a justiciable federal constitutional cause of action is stated by a claim of arbitrary impairment of votes by means of invidiously discriminatory geographic classification."

In the majority opinion of *Baker* v. *Carr*, Justice Brennan stated:

> " . . . it is open to the courts to determine . . . that a discrimination reflects no policy, but simply arbitrary and capricious action."

"Invidious discrimination" is an irrational and inconstant action against a group of citizens. We do not find that the New York State apportionment policy is irrational; all that plaintiffs have illustrated is that the apportionment is not based solely on population. But as was said in *MacDougall* v. *Green*, 335 U.S. 281, 283:

> "To assume that political power is a function exclusively of numbers is to disregard the practicalities of government."

There are other criteria for determining apportionment besides population. In *Baker* v. *Carr*, Justice Harlan said:

> [fol. 649] "Nothing in the federal constitution stops a state from choosing a legislative structure it thinks is best suited to the interests, temper, and customs of its people. . . . "

Such factors as the interests of counties, geography, and concentration of political power, may also be considered. The six plaintiff counties contain 56.2% of the state's population, but they contain only 3.1% of its area. (P. 23 *Opening Memorandum for Defendants—Before the Statutory*

Court On Remand from The Supreme Court of the United States.) If apportionment were based solely on population, this would mean that 3% of the state's area would dominate the rest of New York. Even if the urban representatives were to sincerely endeavor to care for the interests of the state as a whole, it is unlikely that they might be able to fully understand the problems of the remaining vast area of the state. Each rural member of the Legislature presently represents a much greater area than his urban counterpart. If population were to be made the sole criterion of apportionment, the area per representative in certain districts would increase even further. Representatives might not adequately represent localities which were not their home and, correspondingly, the residents of these localities might lose the benefits of the democratic governmental process.

Besides this absence of "invidious discrimination", the New York State Constitution provides that the question "Shall there be a convention to revise the Constitution and [fol. 650] amend the same?" shall be put before the people every twentieth year. (Article XIX, Section 2.) In 1957, a majority voted "No" to this question even though a majority of those voting came from the urban areas. This seems to indicate that most of the voting citizens of New York are satisfied with the current system.

The situation in New York is different than in other states where the Court, in granting the relief requested, stated that one of the prime reasons was that there was no remedy within the electorate. *Toombs* v. *Fortson,* DC, Georgia.

We concur in the findings of fact and conclusions of law reached by Judge Levet; we conclude that this Court has jurisdiction on the subject matter of the suit and this jurisdiction has been exercised and, after trial and examination of the statutes involved and of the undisputed facts, we conclude that the complaint herein should be dismissed upon its merits.

Sylvester J. Ryan.

Dated: New York, N. Y., August 16, 1962.

[fol. 651]

IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

W.M.C.A., INC., et al.

against

SIMON, et al.

WATERMAN, Circuit Judge:

I concur, as does Chief Judge Ryan, in the findings of fact and conclusions of law contained in the Opinion of Judge Levet. I concur with my colleagues in ordering that the complaint herein be dismissed upon its merits.

Sterry R. Waterman, United States Circuit Judge.

[fol. 652] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

61 Civ. 1559

W.M.C.A., INC., R. PETER STRAUS, JOSEPH DE MAIO, EDWARD LIND, S. THOMAS DELANEY, EDWARD C. BROWN, JAMES J. MCCAFFERTY, Plaintiffs,

—against—

CAROLINE K. SIMON, Secretary of State of the State of New York, LOUIS J. LEFKOWITZ, Attorney General of the State of New York, PAUL R. SCREVANE, President of the City Council of the City of New York, EUGENE H. NICKERSON, Chairman, Board of Supervisors, Nassau County, LEONARD BERMAN, Chairman, Board of Supervisors, Westchester County, WILLIAM J. LEONARD, Chairman, Board of Supervisors, Suffolk County, DENIS J. MAHON, JAMES POWER, JOHN R. CREWS, THOMAS MALLEE, Commissioners, Board of Elections, New York City, Defendants.

JUDGMENT—August 17, 1962

The Honorable Sterry R. Waterman, Circuit Judge, Sylvester J. Ryan and Richard H. Levet, Judges of this Court, in an opinion dated August 16, 1962 and filed August 17, 1962, signed by the Honorable Richard H. Levet, having concluded the defendants opposing the action entitled to a dismissal of the complaint on the merits as against plaintiffs and against such defendants as have attempted to sustain plaintiffs' claims; it is

Adjudged: The defendants opposing this action shall have judgment of dismissal of the complaint on the merits

as against plaintiffs and against such defendants as have attempted to sustain plaintiffs' claims.

Herbert A. Charlson, Clerk

Dated: New York, N. Y., August 17, 1962.

Approved: August 17, 1962.

Richard H. Levet, U.S.D.J.

[fol. 653] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

61 Civ. 1559

WMCA, INC., R. PETER STRAUS, JOSEPH DE MAIO, EDWARD LIND, S. THOMAS DELANEY, EDWARD C. BROWN, JAMES J. MCCAFFERTY, Plaintiffs,

—against—

CAROLINE K. SIMON, Secretary of State of the State of New York, LOUIS J. LEFKOWITZ, Attorney General of the State of New York, PAUL R. SCREVANE, President of the City Council of the City of New York, EUGENE H. NICKERSON, County Executive, Nassau County, LEONARD BERMAN, Chairman, Board of Supervisors, Westchester County, ARTHUR CROMARTY, Chairman, Board of Supervisors, Suffolk County, DENIS J. MAHON, JAMES POWER, JOHN R. CREWS, THOMAS MALLEE, Commissioners, Board of Elections, New York City, Defendants.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed August 29, 1962

I. Notice is hereby given that WMCA, Inc.; R. Peter Straus; Joseph De Maio; Edward Lind; S. Thomas De-

laney; Edward C. Brown and James J. McCafferty, the plaintiffs above named, hereby appeal to the Supreme Court of the United States from the final order and judgment dated August 17, 1962 and entered in this action on August 27, 1962 dismissing the complaint, which complaint alleges that plaintiffs were deprived of rights guaranteed [fol. 654] by the Fourteenth Amendment by virtue of provisions embodied in the State Constitution which apportion the state senate and assembly in a manner which unfairly discriminates against residents of New York City.

This appeal is taken pursuant to 28 USC §1253.

II. The clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

. . . . . .

[fol. 655] III. The following questions are presented by this appeal:

The legislative apportionment of New York State is based upon a formula contained in the State Constitution. Application of that formula results, and must necessarily [fol. 656] result, in gross disproportions between population and representation in both houses of the legislature. Plaintiffs established that the Assemblyman from the most populous Assembly district represents fifteen times as many citizens as the Assemblyman from the least populous Assembly district and that the Senator from the most populous Senate district represents approximately twice as many citizens as the Senator from the least populous Senate district. Plaintiffs offered to prove that the apportionment formula was adopted in 1894 specifically to limit the representation of urban residents on the grounds, among others, that such residents were morally and intellectually inferior. Plaintiffs further offered to prove that as a result of the aforesaid malapportionment, plaintiffs and others similarly situated are victims of economic discrimination and suffer other deprivations of due process of the law.

The questions presented are:

1. Whether the district court erred in dismissing the complaint on the grounds that plaintiffs had failed to prove that the apportionment invidiously discriminates against urban residents in violation of the Fourteenth Amendment.

2. Whether the district court erred in excluding all evidence offered to prove:

(a) that the apportionment formula was intended to discriminate against urban residents because they were be- [fol. 657] lieved to be unworthy of an equal voice in the state government, where the complaint alleged that the apportionment results from affirmative legislative action violative of the Fourteenth Amendment.

(b) that plaintiffs were denied due process of law because the malapportioned legislature unfairly discriminates against the underrepresented urban residents.

(c) that a consensus of expert opinion supports the view that an apportionment pursuant to which both houses of the legislature are grossly disproportionate to population is unfair and discriminatory.

Dated: New York, New York, August 29, 1962.

Leonard B. Sand, Attorney for WMCA, Inc.; R. Peter Straus, Joseph De Maio, Edward Lind, S. Thomas Delaney, Edward C. Brown, and James J. McCafferty. Address: 230 Park Avenue, New York 17, New York.

Max Gross, Esq., Concourse Plaza Hotel, Bronx, New York.

[fol. 658] Proof of service (omitted in printing).

[fol. 660]

SUPREME COURT OF THE UNITED STATES

No. 460—October Term, 1962

WMCA, INC., et al., Appellants,

vs.

CAROLINE K. SIMON, Secretary of State of the State of New York, et al.

Appeal from the United States District Court for the Southern District of New York.

ORDER NOTING PROBABLE JURISDICTION—June 10, 1963

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.